

## **REMARKS**

This Amendment and Response is filed in response to the Office Action mailed on March 19, 2008. Please amend the above-identified patent application as follows.

Claims 1-10 were amended, no claims are canceled or added; as a result, claims 1-10 are now pending in this application.

### **Examiner Interview Summary**

The Applicant would like to thank Examiner John R. Schnurr for the courtesy of a phone interview on May 21, 2008 between the Examiner, the Applicant's representative, Jim H. Salter, and inventor, Robert M. Zeidman. During the interview, the claims and the cited reference were discussed and an agreement was reached that the independent claims of the application would be amended to place them in a condition that would be closer to a condition for allowance.

### **§103 Rejection of the Claims**

Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the 1997 Broadcast of "Schindler's List" on NBC in view of Matheny et al. (U.S. Patent No. 6,766,524; hereinafter "Matheny"), and further in view of Blackletter et al. (U.S. Patent No. 7,103,904), and further in view of Lu et al. (U.S. Patent No. 6,647,548).

The Office Action contended that the previously submitted limitation of, "...at a predetermined time and without requiring viewer action, sending said stored embedded information and viewer information to a remote computer to allow said remote computer to construct said viewing record..." is taught/suggested by the Matheny. Specifically, the Office Action referenced Figures 2 and 4 of Matheny as teaching this limitation.

Applicant has amended the pending claims to include, in general (e.g. see amended claim 1), the limitations, "...collecting viewer information including a user identifier and information indicative of an amount of the broadcast viewed by the viewer, specific incentives being based in part on the amount of the broadcast viewed by the viewer,

... providing specific incentives to the viewer based on said viewing record, the viewing record including viewer information obtained without prompted viewer feedback provided by the

viewer as part of viewer participation in an interactive reward program, the specific incentives including information indicative of one or more sponsors of the broadcast.” (emphasis added).

Matheny is directed at a system and method for encouraging viewers to watch television programs by providing an incentive program that requires viewer feedback. As described in Matheny,

...viewers are notified that they can receive frequent-flier miles for answering one or more simple questions at the conclusion of the commercial. To verify that the viewer paid attention to the commercial, the answer to the question may be based on the content of the commercial. A sponsor might ask, for example, that the viewer identify the name of the sponsor or the color of an announcer's shirt. A correct answer indicates that the viewer watched the commercial, and that the viewer is therefore entitled to some reward...

(Matheny Abstract) (emphasis added).

In other embodiments, viewers need not provide a "correct" answer, but may be rewarded for merely participating in the interactive program. Such participation may include selecting an icon with a pointing device, pressing one or more buttons on a remote control, or sending an email message to a location identified in the program. (Matheny Col. 2, lines 11-17) (emphasis added).

In accordance with the invention, broadcaster 205 notifies viewers of television set 235 that they may be rewarded for paying attention to a current or upcoming program, typically a commercial. Later, viewers are presented a question, the answer to which is based upon the content of the program. Viewers that provide the correct answer are entitled to the reward. The identities of viewers who provide correct answers to the question are therefore forwarded to server 220, within which is maintained a database of viewers and corresponding earned entitlements. (Matheny Col. 2, lines 55-65) (emphasis added)

The possibility of receiving a reward will entice some viewers to claim rewards without bothering to watch the associated commercial. Thus, in accordance with one embodiment of the invention, viewers must provide some feedback to indicate that they watched the commercial before they are entitled to a reward. In the example of FIG. 2, set-top box 245 presents the viewer with a test question 265 at or near the end to the commercial. The question is based upon the content of the commercial, so viewers who watch the commercial are able to answer the question correctly. In the example depicted as a subsequent video frame 266 of television 235, a reward query 265 prompts the viewer with a query 269 asking the viewer to enter the previously displayed cruise destination into a form field 270. Entering the

correct answer in field 270 entitles a viewer to the offered reward. (Matheny Col. 3, lines 14-30) (emphasis added)

Broadcasters may wish to pose questions for which there are no correct answers. For example, a sponsor may wish to ask survey questions. The invention may be adapted to provide rewards to viewers who answer such questions. Further, some viewers may find filling in blanks too cumbersome; thus, other embodiments employ simpler test methods (e.g., multiple-choice or true/false), or reward viewers for merely participating in interactive programs. Such participation may include selecting an icon with a pointing device or pressing one or more buttons on a remote control. Still other embodiments may demand more information from a viewer, such as by prompting the viewer to send an email message to a location identified in the program, and possibly by requiring the viewer fill out an electronic form. (Matheny Col. 3, lines 31-45) (emphasis added)

As these passages from Matheny indicate and as discussed during the Examiner Interview, Matheny is directed at a system and method that requires some sort of viewer feedback as part of the reward validation and fulfillment process. As described in Matheny, “viewers must provide some feedback to indicate that they watched the commercial before they are entitled to a reward”. As such, Matheny is designed and implemented to require such prompted viewer feedback from the viewer as part of viewer participation in an interactive reward program. No such prompted viewer feedback is required in the invention claimed herein. This distinguishing limitation of the present invention is captured in amended claim 1, for example as, “wherein the collected viewer information is not collected in response to prompted viewer feedback provided by the viewer as part of viewer participation in an interactive reward program” and “providing specific incentives to the viewer based on said viewing record, the viewing record including viewer information obtained without prompted viewer feedback provided by the viewer as part of viewer participation in an interactive reward program, the specific incentives including information indicative of one or more sponsors of the broadcast”. These limitations are not taught or suggested in Matheny. In fact as clearly set forth in the passages of Matheny set forth above, Matheny teaches that the identities of viewers who provide correct answers to the question are therefore forwarded to server 220, within which is maintained a database of viewers and corresponding earned entitlements. Thus, without prompted viewer feedback, Matheny doesn’t even store viewer identities in its database of those viewers have not

provided valid feedback. Such a teaching in Matheny is directed away from the presently claimed invention that does not require such prompted viewer feedback. Therefore, Matheny does not teach or suggest the invention presently claimed in amended claim 1. Similar limitations can be found in Claims 2-10 as amended herein.

Lu describes an audience measurement system that identifies a program which is broadcast from a signal source and to which a receiver is tuned. The audience measurement system includes a code reader for reading an ancillary code of the program to which the receiver is tuned, a channel status detector for determining channel status relating to channels to which the receiver is tuned, a memory for storing ancillary codes read by the code reading means and for storing channel status determined by the channel status determining means if ancillary codes are not readable by the code reading means, and a communicator for communicating the ancillary code and/or the channel status to a central office computer. Lu is basically an embodiment of the Nielsen program monitoring system that passively collects data on an aggregated set of viewers.

However, Lu does not describe or suggest any type of incentive program, which is integral to the presently claimed invention. Lu is directed to and motivated by a need to collect viewer programming choices from an aggregate audience to enable producers to make programming choices. There is no suggestion that particular viewers could be given incentives for their program viewing. In fact, Lu is only concerned about the viewing patterns of an aggregate audience, not individual viewers. Further, Lu would not want to skew the results of their program viewing monitoring by offering incentives to viewers. Thus, Lu does not teach or suggest the presently claimed invention. The invention as presently claimed includes limitations that distinguish the pending claims from Lu. In particular, claim 1, for example, includes, “...collecting viewer information including a user identifier and information indicative of an amount of the broadcast viewed by the viewer, specific incentives being based in part on the amount of the broadcast viewed by the viewer, ...” Because Lu does not teach or suggest (and would not be motivated by) a system for providing incentives, Lu does not collect information that is useful for providing incentives as presently claimed. Thus, Lu does not render obvious the currently pending claims.

In summary and as discussed in the Examiner Interview, Matheny teaches an incentive system that requires viewer feedback. Lu describes a viewer monitoring system that does not require viewer feedback, but that does not suggest (and is not compatible with) an incentive system. The presently claimed invention claims an incentive system that collects viewer information without requiring viewer feedback. Thus, the present invention occupies an important gap between Matheny and Lu. As such, the presently pending claims are novel and non-obvious over Matheny and Lu.

Blackketter is offered as a description of advertising templates that may include sponsor names. However, Blackketter does not describe or suggest the presently claimed system and method wherein the collected viewer information is not collected in response to prompted viewer feedback provided by the viewer as part of viewer participation in an interactive reward program. As such, Blackketter alone or in combination with Matheny or Lu does not render obvious the presently claimed invention.

Applicant continues to assert that the previously submitted claims with the limitations including, “without commercial interruption” distinguish over Matheny, the 1997 Broadcast of “Schindler’s List” on NBC, and all other art of record. However, the claims have been amended herein to further distinguish the claimed invention from the art of record as detailed above.

Therefore, Applicant respectfully submits that at least for the reasons set forth above, independent claim 1 is allowable. In addition, because claims 2-10 present similar limitations as in claim 1 as argued above, Applicant submits that at least for the same reasons set forth above, claims 2-10 are also allowable and thus their rejections should be withdrawn. As such, claims 1-10 as amended herein are patentable over Matheny, the 1997 Broadcast of “Schindler’s List” on NBC, Lu, Blackketter, and the other art of record. The Applicant respectfully requests withdrawal of the § 103(a) rejections.

Applicant therefore respectfully requests withdrawal of the pending rejections and allowance of the pending claims.

### **CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Jim H. Salter at 408-406-4855 to facilitate prosecution of this application.

Respectfully submitted,

ROBERT M. ZEIDMAN

By his Representatives,

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Date May 27, 2008

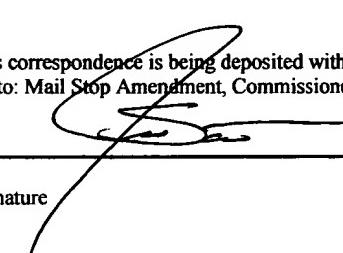
By \_\_\_\_\_

  
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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 27 day of May, 2008

Jim H. SALTER

Name

  
Signature